

Hand-Delivered

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA

VS.

JAMES E. MACALPINE
Defendant

DOCKET NO: 1:18cr92

Motion to Dismiss
Challenge to Jurisdiction
Demand for Sanctions

FILED
ASHEVILLE, N.C.
SEP 12 2018
U.S. DISTRICT COURT
W. DIST. OF N.C.

Now comes James E. MacAlpine (the Petitioner), a living, breathing sentient being, Man, without assistance of counsel, not the defendant, the beneficiary in fact, not the Trustee, and hereby moves this Court to dismiss the above captioned action with prejudice for lack of subject matter jurisdiction and to order sanctions against R. Andrew Murray and his subordinates. In support of the relief sought by the Court, Petitioner presents on and for the record:

As every school child is taught from an early age, the United States of America is a constitutional republic. It is composed of 50 demi sovereign states and a National Government which has been granted 17 limited enumerated powers. As a result of more than two centuries of state decisis by the Supreme Court of the United States, there has been established a duality of jurisdictions concomitant within the nation.

When Congress is legislating for the confederation of states it must be bound by the limited grant of authority found in the founding compact known as the Constitution for the United States. However, when Congress is legislating for the federal zone, comprising the ten miles square known as Washington, D.C. and the territories, Congress may exercise plenary authority.

Through many artifices, schemes and broken promises, the Constitutional Republic bequeathed to the posterity by the Founding fathers is all but unrecognizable to those great men.

Starting with the not so Civil War continuing to the bankruptcy of the United States in January 1934, then the switch in time cases in 1935, the Administrative Procedures act, and reaching a near penultimate usurpation with the destruction of the states themselves in the late 1950s through early 1970s, the very concept of state sovereignty, state Citizenship, and the principle that governments are instituted for the protection of rights became the antithesis of the current once again bankrupt United States.

As Petitioner proceeds with the drafting of this legal filing he will demonstrate in myriad ways how AUSA Murray is either incompetent or intentionally committing fraud upon this court. Here is exhibit one in that vein. Mr. Murray committed great theater before the grand jury ridiculing Petitioner for asserting his status as a Citizen of North Carolina and not a US citizen. How could a man trained and learned in the law be ignorant of the following:

U.S. v. Anthony 24 Fed. 829 (1873) "The term resident and citizen of the United States is distinguished from a Citizen of one of the several states, in that the former is a special class of citizen created by Congress."

"We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of it's own..."

United States v. Cruikshank, 92 U.S. 542 (1875)

"...he was not a citizen of the United States, he was a citizen and voter of the State,..." "One may be a citizen of a State and yet not a citizen of the United States".

McDonel v. The State, 90 Ind. 320 (1883)

"That there is a citizenship of the United States and citizenship of a state,..."

Tashiro v. Jordan, 201 Cal. 236 (1927)

"A citizen of the United States is a citizen of the federal government ..."

Kitchens v. Steele, 112 F.Supp 383

"Taxpayers are not [de jure] State Citizens." *Belmont v. Town of Gulfport*, 122 So. 10.

State v. Manuel, 20 NC 122: "the term 'citizen' in the United States, is analogous to the term 'subject' in common law; the change of phrase has resulted from the change in government."

Supreme Court: *Jones v. Temmer*, 89 F. Supp 1226:

"The privileges and immunities clause of the 14th Amendment protects very few rights because it neither incorporates the Bill of Rights, nor protects all rights of individual citizens. Instead this provision protects only those rights peculiar to being a citizen of the federal government; it does not protect those rights which relate to state citizenship."

Supreme Court: *US vs. Valentine* 288 F. Supp. 957:

"The only absolute and unqualified right of a United States citizen is to residence within the territorial boundaries of the United States."

The Amendment (14th) recognized that "an individual can be a Citizen of one of the several states without being a citizen of the United States," (*U.S. v. Anthony*, 24 Fed. Cas. 829, 830), or, "a citizen of the United States without being a Citizen of a state." (*Slaughter-House Cases*, *supra*; cf. *U.S. v. Cruikshank*, 92 US 542, 549 (1875)).

A more recent case is *Crosse v. Bd. of Supervisors*, 221 A.2d 431 (1966) which says: "Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state." Citing *U.S. v. Cruikshank*, *supra*.

"Unless the defendant can prove he is not a citizen of the United States, the IRS has the right to inquire and determine a tax liability." *U.S. v. Slater*, 545 Fed. Supp. 179,182 (1982).

"There are, then, under our republican form of government, two classes of citizens, one of the United States and one of the state".

Gardina v. Board of Registrars of Jefferson County, 160 Ala. 155; 48 So. 788 (1909)

"The governments of the United States and of each state of the several states are distinct from one another. The rights of a citizen under one may be quite different from those which he has under the other".

Colgate v. Harvey, 296 U.S. 404; 56 S.Ct. 252 (1935)

"...rights of national citizenship as distinct from the fundamental or natural rights inherent in state citizenship".

Madden v. Kentucky, 309 U.S. 83; 84 L.Ed. 590 (1940)

"There is a difference between privileges and immunities belonging to the citizens of the United States as such, and those belonging to the citizens of each state as such".

Ruhrstrat v. People, 57 N.E. 41 (1900)

"Therefore, the U.S. citizens residing in one of the states of the union, are classified as property and franchises of the federal government as an "individual entity"', Wheeling Steel Corp. v. Fox, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773

"...the first eight amendments have uniformly been held not to be protected from state action by the privilege and immunities clause [of the 14th Amendment]."

Hague v. CIO, 307 US 496, 520

"The right to trial by jury in civil cases, guaranteed by the 7th Amendment...and the right to bear arms guaranteed by the 2nd Amendment...have been distinctly held not to be privileges and immunities of citizens of the United States guaranteed by the 14th Amendment...and in effect the same decision was made in respect of the guarantee against prosecution, except by indictment of a grand jury, contained in the 5th Amendment...and in respect of the right to be confronted with witnesses, contained in the 6th Amendment...it was held that the indictment, made indispensable by the 5th Amendment, and trial by jury guaranteed by the 6th Amendment, were not privileges and immunities of citizens of the United States, as those words were used in the 14th Amendment. We conclude, therefore, that the exemption from compulsory self-incrimination is not a privilege or immunity of National citizenship guaranteed by this clause of the 14th Amendment."

Twining v. New Jersey, 211 US 78, 98-99

"The acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provision of the statute or with the regulations prescribed that are repugnant to the Constitution of the United States." *W. W. CARGILL CO. v. STATE OF MINNESOTA*, 180 U.S. 452 (1901) 180 U.S. 452

"A "US Citizen" upon leaving the District of Columbia becomes involved in "interstate commerce", as a "resident" does not have the common-law right to travel, of a Citizen of one of the several states." *Hendrick v. Maryland S.C. Reporter's Rd.* 610-625. (1914)

For purposes of this immediate discussion two case precedents are particularly germane, to wit;

"Unless the defendant can prove he is not a citizen of the United States, the IRS has the right to inquire and determine a tax liability." *U.S. v. Slater*, 545 Fed. Supp. 179,182 (1982).

"Taxpayers are not [de jure] State Citizens." *Belmont v. Town of Gulfport*, 122 So. 10.

We can see by the holding in these last two citations why Mr. Murray would need to create a false impression in the minds of the grand jury. If he told the truth, if he allowed himself to be bound by the law of the land as defined by the Supreme Court he would not be able to practice his particular brand of thuggery against Petitioner. As Al gore likes to say, it's an inconvenient truth!

So if the truth is as held in *Belmont v. Town of Gulfport*, 122 So. 1, *Tax Taxpayers are not [de jure] State Citizens*, all that needs to be said has been said.

But let's continue all the same. Here we see:

26 CFR 1.871-1 - CLASSIFICATION AND MANNER OF TAXING ALIEN INDIVIDUALS.

§ 1.871-1 Classification and manner of taxing alien individuals. (a) Classes of aliens. For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens. Resident alien individuals are, in general, taxable the same as citizens of the United States; that is, a resident alien is taxable on income derived from all sources, including sources without the United States. See § 1.1-1(b).

Nonresident alien individuals are taxable only on certain income from sources within the United States and on the income described in section 864(c)(4) from sources without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States.

However, nonresident alien individuals may elect, under section 6013 (g) or (h), to be treated as U.S. residents for purposes of determining their income tax liability under Chapters 1, 5, and 24 of the code

So we see by the IRS's own regulations that non-resident aliens are nontaxable, ie. non-taxpayers, except on certain income earned within the United States or if one is engaged in a trade or business which is defined as:

The term trade or business" includes the performance of the functions of a public office.

So Petitioner has no problem with the tax law as written, only as enforced with thuggery, extortion, threats of violence and loss of liberty and property. Congress has the right to enact a tax in the federal zone.

The Sixteenth Amendment is frequently cited as the constitutional basis for an income tax that was previously ruled unconstitutional. But once again Mr. Murray, who does not get to use ignorance of the law as an excuse must be aware of the following.

The 16th did NOT repeal these restrictions on Congress as the Supreme Court has ruled in several cases, that the 16th Amendment only addressed the 1908 Corporate Tax Act and did not expand Congress taxing authority to include any new subjects to be taxed.

Brushaber v. Union Pacific R. Co., 240 US 1.11 (1916): "...the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it..."

Stanton v. Baltic Mining Co., 240 US 103, 112 (1916): "...it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation."

Bowers v. Kerbaugh-Empire Co., 270, 174 (1926): "The Sixteenth Amendment declares that Congress shall have the power to levy and collect taxes on income, from whatever source derived' without apportionment among the several states, and without regard to any census or

enumeration. It was not the purpose or effect of that amendment to bring any new subject within the taxing power."

And in *Doyle v. Mitchell Bros.*, 247 US 179, 183 (1918): "An examination of these and other provisions of the Act (The 16th Amendment) make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations."

As for "INCOME"

Flint v. Stone Tracy Co., 220 US 107, 144 (1911): "A reading of this portion of the statute (1909 corporation tax act) shows the purpose and design of Congress in its enactment and the subject-matter of its operation. It is at once apparent that its terms embrace corporations and joint stock companies or associations which are organized for profit, and have a capital stock represented by shares. Such joint stock companies, while differing somewhat from corporations, have many of their attributes and enjoy many of their privileges."

Merchants' Loan & Trust Co. v. Smetanka, 255 US 509, 519 (1921): "There would seem to be no room to doubt that the word 'income' must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by decisions of this Court."

Again those pesky inconvenient truths. Now it has been almost universally recognized that the federal courts have ruled these arguments as frivolous or without merit. But what does one expect when these same federal courts no longer recognize their constitutionally limited and Supreme Court proscribed jurisdictional limits.

The booklet "The Legal Basis for Term "Nonresident Alien" is annexed here and is included as if fully set forth.

Again Mr. Murray seems to be wont to perform his Constitutionally mandated duty and sacred oath to protect the people of this once great nation from an excess of jurisdiction and seditious over reach by the federal government.

His contention that Petitioner or the Defendant can be forced by him to file state income tax returns opens up a line of inquiry that exposes the totality of vile, sinister intent perpetrated upon the people of the several states.

Beginning with the purported new Constitution for the State of North Carolina circa 1971 we read:

NORTH CAROLINA STATE CONSTITUTION

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

An informed Citizen must ask, "Who are the people of State of North Carolina?" In light of the following definition from

N.C.G.S.A. § 105-164.3

§ 105-164.3. Definitions

Effective: July 11, 2016

(14) In this (the) State.--Within the exterior limits of the State of North Carolina, including all territory within these limits owned by or ceded to the United States of America.

It doesn't take a law school graduate to see that State of North Carolina only exists on land owned by or ceded to the United States! So how did the people of State of North Carolina create a constitution for the people of North Carolina? The answer of course is they didn't. The State of North Carolina is a fraudulent, seditious entity exacting untold money and committing treason against the body politic known as North Carolina, one of the original states.

So now we see that the federal courts no longer have to worry about their limited jurisdiction since all who come before them are assumedly coming from a U.S. instrumentality known as State of North Carolina, a fraudulent entity intended to deceive the people and extract their wealth under color of law.

Fortunately the U.S. Supreme Court provided a remedy for just this eventuality, it is known as a Miln Action, *New York v. Miln*, 36 U.S. 11 Pet. 102 102 (1837)

Petitioner hereby gives notice that he demands his Miln rights be protected and afforded him. Normally a Miln action would be required to be filed in the Citizen's State Court. However, Petitioner has not been able to find a North Carolina court. Congress has seen fit to shirk its constitutional duty to provide a republican form of government, actually going so far as to put asunder the several states and replacing them with fraudulent State of States in their place. Just like the Federal government broke its promise that social security would always be voluntary and never be used as a national ID, we the People now find ourselves in a constitutional crisis whereby the clear guidance of the constitution and the Supreme Court has been treasonously and seditiously ignored so that agents of the federal government trespass in the sovereign several states with impunity.

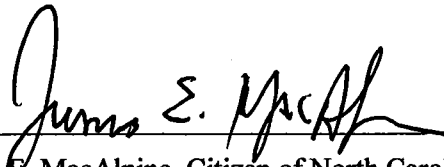
Miln places a burden of responsibilities and duties upon state actors to protect the People from incursions and over reach by any entities including the federal government. It's called the federal income tax because it is not applicable to the nation which is the confederation of states. Petitioner hereby demands this Court respect Petitioner's Miln rights by meeting the proscribed Miln duties and responsibilities so eloquently written about by the Supreme Court of the United States. A return to fundamental law is required for the preservation of liberty and the sacred experiment of government of, by and for the People of these states united.

Petitioner demands that this Court declare who is the governor of North Carolina and where its legislature and courts are currently seated. Otherwise, Petitioner will feel compelled to use the subpoena power of this Court to depose Roy Cooper, Governor of State of North Carolina and ask him who the Governor of North Carolina is. He obviously cannot be the governor of North Carolina because that would violate the 1971 Constitution's prohibition against dual office holding.

Petitioner hereby demands this court sanction Mr. Murray \$10,000 plus \$1000.00 per day from the date of the filing date of this document until he dismisses this case with prejudice.

Finally Petitioner moves this court to dismiss this case with prejudice sua sponte.

Submitted this 12th day of September, 2018


James E. MacAlpine, Citizen of North Carolina,